

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200927026**

Release Date: 7/2/2009

Index Number: 1361.05-00, 1362.01-03,
9100.31-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-144691-08
Date:
March 27, 2009

LEGEND

Parent =

Subsidiary =

X =

State =

Date 1 =

Dear :

This letter responds to a letter dated October 1, 2008, and subsequent correspondence, submitted on behalf of Parent by its authorized representatives, requesting extensions of time under § 301.9100-3 of the Procedure and Administration Regulations to elect to treat Parent as an association taxable as a corporation and Subsidiary as a qualified subchapter S subsidiary (QSub) and requesting relief under § 1362(b)(5) of the Internal Revenue Code for Parent to elect to be an S corporation.

FACTS

Parent was organized as a business trust under State law on Date 1. On Date 1, X, the shareholder of Subsidiary, an S corporation, contributed all of X's shares in

Subsidiary to Parent in exchange for 100 percent ownership of Parent. X intended for Parent to elect to be treated as an association taxable as a corporation and then to elect to be treated as an S corporation, with both elections effective Date 1. In addition, Parent intended to make a QSub election for Subsidiary, effective Date 1. However, due to inadvertence, Form 2553, Election by a Small Business Corporation, Form 8832, Entity Classification Election, and Form 8869, Qualified Subchapter S Subsidiary Election, were not timely filed.

LAW AND ANALYSIS

Section 1362(a) provides that a small business corporation can elect to be treated as an S corporation.

Section 1362(b) provides that if an S election is made within the first two and one-half months of a corporation's taxable year, then that corporation will be treated as an S corporation for the year in which the election was made. If an election is made after the first two and one-half months of a corporation's taxable year, then the corporation will generally not be treated as an S corporation until the following taxable year.

Section 1362(b)(5) provides that if no election is made pursuant to § 1362(a), or if the election is made after the date prescribed for making such an election, and the Secretary determines reasonable cause existed for the failure to timely make the election, then the Secretary can treat such an election as timely made for that taxable year and effective as of the first day of that taxable year.

Section 1361(b)(3)(A) provides that a QSub shall not be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines a QSub as a domestic corporation which is not an ineligible corporation, if 100 percent of the stock of the corporation is held by an S corporation, and the S corporation elects to treat the corporation as a QSub.

Section 1.1361-3(a) of the Income Tax Regulations provides the time and manner of making a QSub election. A taxpayer makes a QSub election with respect to a subsidiary by filing a Form 8869 with the appropriate service center. Section 1.1361-3(a)(4) provides that a QSub election cannot be effective more than two months and 15 days prior to the date of filing.

Section 301.7701-3(a) provides, in part, that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in this

section. An eligible entity with a single owner can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a disregarded entity.

Section 301.7701-3(b)(1) provides that except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a domestic eligible entity is (i) a partnership if it has two or more members; or (ii) disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c)(1)(i) provides, in part, that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832 with the service center designated on the form.

Section 301.7701-3(c)(1)(iii) provides, in part, that an election made under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed.

Section 301.9100-1(c) gives the Commissioner discretion to grant reasonable extensions of time to make regulatory elections under the rules of §§ 301.9100-2 and 301.9100-3. Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-3 sets forth the standards that the Commissioner uses to determine whether to grant a discretionary extension of time. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that Parent has satisfied the requirements of § 301.9100-3 with respect to its late entity classification and late QSub election, and, provided that Parent otherwise qualifies as an S corporation, that Parent has satisfied the requirement of § 1362(b)(5) with respect to its late S election.

As a result, Parent is granted an extension of time of 60 days from the date of this letter to file a properly executed Form 8832 with the appropriate service center, effective Date 1, a properly executed Form 2553 with the appropriate service center, effective Date 1, and a properly executed Form 8869 with the appropriate service center, effective Date 1. A copy of this letter should be attached to each election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

/s/

Curtis G. Wilson
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

A copy of this letter
A copy for § 6110 purposes

cc: